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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,987	02/08/2002	Jesse H. Gaytan	41775	9925
1609	7590	06/15/2004		
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P. 1300 19TH STREET, N.W. SUITE 600 WASHINGTON, DC 20036				
EXAMINER				
COLE, MONIQUE T				
ART UNIT		PAPER NUMBER		
1743				

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/067,987

Applicant(s)

GAYTAN, JESSE H.

Examiner

Monique T. Cole

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-29 is/are allowed.
- 6) ☒ Claim(s) 1-11, 14-21, 24, 25, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 12, 13, 22, 23 and 32-34 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-11, 14-21, 24, 25, 30 & 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over USP 6,337,323 to Cummings et al. (herein referred to as "Cummings") in view of USP 5,645,845 to Neumann et al. (herein referred to as "Neumann") & USP 5,118,506 to Eichoefer (herein referred to as "Eichoefer").

Cummings teaches a chemically, stable insecticidally active pellet having a low moisture content (up to .05% water) and at least about 95% of the active ingredient, acephate. See abstract and col. 4, lines 5-67. The insecticidal pellet may also contain a binder, vinylpyrrolidone-vinyl acetate copolymer (col. 5, lines 19-24). Cummings teaches that the

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present formulation "reduces" the offensive odors associated with acephate usage (col. 6, lines 27-28). Moreover, the Cummings reference recognizes that those of skill in the insecticidal art would know that minor amounts of inert ingredients could be admixed with the active ingredient as long as the addition of the materials did not conflict with or adversely affect the basic characteristics of the pellets formed in accordance with the invention.

Neumann teaches an insecticidal formulation that teaches lemon oil, pinene, limonene and terpineol among perfumes that are useful in masking odor rendered from an insecticidal composition (col. 4, line 62; col. 5, lines 7-12). Eichoefer teaches an insecticidal pellet formulation which contains pine oil and alpha-pinene as contributors to the insecticidal capabilities of the formulation (col. 2, lines 3-10; col. 3, lines 27-28). Thus, given the collective knowledge in the art that 1) pinene & other terpene hydrocarbons and alcohols contribute to insecticidal effectiveness of insecticides, and 2) these components are further useful as perfumes, thereby masking the known offensive odor associated with insecticide use, it would have been obvious to one of ordinary skill in the art to modify the Cummings formulation by including any of the perfuming agents taught in Neumann, and in particular pinene, limonene, terpineol because of the added benefit taught by Eichoefer. By so doing, the Cummings formulation would obtain increased insecticidal benefits and the range of use would be broadened to include areas such as public parks, golf courses or other areas frequented by the public where offensive odor would be a deterrent.

*Allowable Subject Matter*

4. Claims 26-29 are allowed.

5. Claims 12, 13, 22, 23, 32, 33 & 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest the insecticidally effective formulation wherein the binder is a polyakylene oxide. The prior art does not teach or suggest a process for making insecticidally effective granules such as instantly claimed where the anhydrous masking agent is sprayed onto the dried extrudates.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique T. Cole whose telephone number is 571-272-1255. The examiner can normally be reached on Monday-Thursday from 6:30 A.M. to 4:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Monique T. Cole  
Examiner

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MC